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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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AKENATEN BLUEHORSE,

Case No. 3:14-cv-00489-MMD-VPC

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Petitioner,

ORDER

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v.

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WAHSOE COUNTY SHERIFF, et al.,

Respondents.

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This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28

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U.S.C. § 2254 by a former inmate. This Court has conducted a preliminary review of the

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petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United

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States District Courts. The Court must dismiss a petition “[i]f it plainly appears from the

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petition and any attached exhibits that the petitioner is not entitled to relief in the district

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court.” Rule 4 of the Rules Governing Section 2254 Cases; see also *Hendricks v.*

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*Vasquez*, 908 F.2d 490 (9<sup>th</sup> Cir. 1990).

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A federal court may only grant a petition for writ of habeas corpus if the petitioner

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can show that “he is in custody in violation of the Constitution . . . .” 28 U.S.C.

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§ 2254(a). “According to traditional interpretation, the writ of habeas corpus is limited to

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attacks upon the legality or duration of confinement.” *Crawford v. Bell*, 599 F.2d 890,

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891 (9<sup>th</sup> Cir. 1979) (*citing Preiser v. Rodriguez*, 411 U.S. 475, 484-86 (1973)). The

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instant petition does not attack the legality or duration of petitioner’s confinement.

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Rather, the petition challenges petitioner’s conditions of confinement while incarcerated

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at the Washoe County Detention Facility. Thus, his claims are not appropriate for

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habeas corpus relief. Challenges to the conditions of confinement are more

1 appropriately raised in a civil rights action filed pursuant to 42 U.S.C. § 1983. See  
 2 *Badea v. Cox*, 931 F.2d 573, 574 (9<sup>th</sup> Cir. 1991); *Crawford v. Bell*, 599 F.2d at 891-92.  
 3 In the motion to withdraw and/or dismiss petition for habeas corpus and motion to  
 4 proceed in forma pauperis (dkt. no. 3), petitioner indicates his understanding that  
 5 allegations challenging conditions of confinement should be raised in a civil rights action  
 6 filed pursuant to 42 U.S.C. § 1983, rather than a habeas petition. Petitioner's motion to  
 7 withdraw and/or dismiss the habeas petition and *in forma pauperis* application is  
 8 granted.

9         District courts are required to rule on the certificate of appealability in the order  
 10 disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a  
 11 notice of appeal and request for certificate of appealability to be filed. Rule 11(a). In  
 12 order to proceed with any appeal, petitioner must receive a certificate of appealability.  
 13 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9<sup>th</sup> Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d  
 14 946, 950-951 (9<sup>th</sup> Cir. 2006); see also *United States v. Mikels*, 236 F.3d 550, 551-52  
 15 (9th Cir. 2001). Generally, a petitioner must make “a substantial showing of the denial of  
 16 a constitutional right” to warrant a certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2);  
 17 *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The petitioner must demonstrate that  
 18 reasonable jurists would find the district court's assessment of the constitutional claims  
 19 debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at 484). In order to meet this threshold  
 20 inquiry, the petitioner has the burden of demonstrating that the issues are debatable  
 21 among jurists of reason; that a court could resolve the issues differently; or that the  
 22 questions are adequate to deserve encouragement to proceed further. *Id.* In this case,  
 23 no reasonable jurist would find this Court's dismissal of the petition debatable or wrong.  
 24 The Court therefore denies petitioner a certificate of appealability.

25         It is therefore ordered that this action is dismissed for failure to state a cognizable  
 26 habeas corpus claim. The dismissal is without prejudice to petitioner raising his claims  
 27 in a civil rights action pursuant to 42 U.S.C. § 1983, filed in a new case.

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1        It is further ordered that petitioner's motion to withdraw or dismiss the petition  
2 and motion to proceed *in forma pauperis* (dkt. no. 3) is granted.

3        It is further ordered that petitioner's motion to proceed *in forma pauperis* (dkt. no.  
4 1) is denied.

5        It is further ordered that petitioner is denied a certificate of appealability.

6        It is further ordered that the Clerk shall enter judgment accordingly.

7        DATED THIS 10<sup>th</sup> day of October 2014.

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11      MIRANDA M. DU  
12      UNITED STATES DISTRICT JUDGE

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